IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 31888 of 2006(U)

PETITIONER:

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1. V.M. SANTHA, AGED 69 YEARS,
   D/O. T.M.KUNHUNNI NEDUNGADI, RESIDING AT
   `AJANTHA', PUHIYARA P.O., KOZHIKKODE-4.

2. ANITHA KISHAN, D/O. V.M.SANTHA,
   AGED 42 YEARS, `AJANTHA', PUTHIYARA P.O.,
   CALICUT-4.

3. M/S. LICHEN BUILDERS AND
   DEVELOPERS PRIVATE LIMITED, REGD. OFFICE AT
   ST.AUGUSTINE BUILDING, KALOOR, KOCHI-17,
   REPRESENTED BY ITS MANAGING DIRECTOR,BOBAN PAUL,
   S/O.PAULOSE, AGED 43.

BY ADV. SRI.K.K.CHANDRAN PILLAI
SRI.R.V.SATHYAPRIYAN NAIR

RESPONDENTS:

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1. KOZHIKODE CORPORATION,
   REPRESENTED BY ITS SECRETARY, CORPORATION BUILDING
   KOZHIKODE.

2. THE CALICUT DEVELOPMENT AUTHORITY (CDA),
   REPRESENTED BY ITS SECRETARY, KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN,SC,KOZHIKODE CORP
SRI.P.SANTHALINGAM
SRI.A.D.SHAJAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C.KURIAKOSE, J.

W.P.(C)NO.31888 of 2006

Dated this 12th day of December, 2006

JUDGMENT

The Calicut Development Authority (CDA) has filed a detailed counter affidavit. The Authority would contend in paragraph 2 of the counter affidavit that there is a genuine proposal for the widening of the Kallayi Road presently having width of 12 meters to 24 meters. The Calicut Development Authority being one of the agencies constituted for implementation of the proposals like this, has undertaken this proposal way back in 1998. Realising that the land acquisition is one of the major hurdles before the agency in any development work, the Calicut Development Authority have formulated a new method in tune with the land pooling to avoid all difficulties of land acquisition. By this method the Calicut Development Authority intend to implement the project with public participation. According to this new method the whole land required for the road widening have to be surrendered by the land owners to the Calicut Development Authority free of

cost. Then the Calicut Development Authority will take up responsibility to rehabilitate all the land owners and tenants by constructing a new building in plots in the nearby area. It is further stated that in the land to be surrendered by the land owners the Authority will construct shopping complex and certain percentage of the built up area will be given to the land owners which they can sell or rent out. In paragraph 6 of the counter affidavit it is stated that in the meeting of the land owners of the rehabilitation plots the representative of the petitioners 1 and 2 have expressed their willingness to surrender their land for road widening. But as the entire land of the petitioners are required for the successful implementation of the project this Authority requires the entire land itself.

2. Heard the submissions of Sri.K.K.Chandran Pillai the learned counsel for the petitioners and those of Sri.P.Santhalingalm, the learned Standing Counsel for the 2nd respondent. The counsel would make submissions on the basis of the pleadings respectively raised by the parties. Concededly no notification under Section 4 of the Land Acquisition Act has been promulgated for acquisition of the properties belonging to

the petitioners. The stand of the 2nd respondent is that since the Land acquisition proceedings is a time consuming affair, the 2nd respondent has introduced an alternative method, details of which are given in the counter affidavit. Even though it is stated in paragraph 6 of the counter affidavit that in the meeting of the land owners representative of the petitioners 1 and 2 have expressed their willingness to surrender their land for road widening, Sri.Chandran Pillai would clarify that there was no agreement for making free surrender. In spite of the above mentioned para 6 of the statement, in paragraph 5 of the counter affidavit it is stated that almost all the owners who attended the meeting welcomed the proposal to widen the road but are not willing voluntarily to surrender their land for the construction of rehabilitation complexes. This circumstance will show that implementation of the method conceived by the CDA will not be easy.

3. The counter affidavit concludes that in the above circumstances, considering the urgency of the road widening and the on going steps for implementing the project, Calicut Development Authority are not in a position to issue No

Objection Certificate to the first respondent Corporation for constructing shopping complex. The case of the petitioners is that in their case, the question of 2nd respondent rehabilitating their tenants will not arise. It is for rehabilitating the tenants of the petitioners who are 49 in numbers, that the petitioners proposed to construct building as per the building permit applied for. Agreements have already been reached between the tenants and the petitioners regarding tenants rehabilitation in the proposed building. The petitioners have left a width of 16 meters from the edge of the road to the constructions proposed to be made and therefore, even if the road widening project becomes a reality, the petitioners and the tenants will not have to be evicted, so submits Sri.Chandran Pillai. I find force in the above submissions of Sri.Chandran Pillai. Judgment in **Padmini v. State of Kerala (1993 (3) KLT 465)** is rendered by a Division Bench covers the facts situation obtaining in this case.

Under the above circumstances, the writ petition will stand allowed. Ext.P3 is quashed and there will be a direction to the 2nd respondent – Development Authority to issue No Objection Certificate to the first respondent Corporation ignoring the

proposals and the claims which are referred to in their counter affidavit. No Objection Certificate as directed above will be issued by the 2nd respondent to the first respondent within three weeks of receiving a copy of this judgment and upon receiving such No Objection Certificate, the first respondent will issue building permit to the petitioners provided the plan submitted is otherwise in order.

PIUS C.KURIAKOSE
Judge

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